

UNITED STATES DISTRICT COURT
DISTRICT OF MINNESOTA

TIMMY J. REICHLING,

Civil No. 22-81 (JRT/LIB)

Petitioner,

v.

**MEMORANDUM OPINION AND ORDER
CALCULATING APPELLATE FILING FEE**

T.J. FIKES, ET AL,

Respondents.

Timmy J. Reichling, Reg. No. 08500-090, FCI—SEAGOVILLE, P.O. BOX 9000, SEAGOVILLE, TX 75159, *pro se* plaintiff.

Ana H. Voss and Chad A. Blumenfield, **UNITED STATES ATTORNEY'S OFFICE**, 300 South Fourth Street, Minneapolis, MN 55415 for defendants.

Petitioner Timmy J. Reichling, an incarcerated individual, filed a Notice of Appeal to the Eighth Circuit challenging the Court's order adopting the Magistrate Judge's Report and Recommendation ("R&R"), denying Reichling's motions for a preliminary injunction and appointment of counsel, and dismissing Reichling's case. (R&R at 2–3, May 6, 2022, Docket No. 17; Order Adopting R&R, May 27, 2022, Docket No. 23; Notice of Appeal, June 27, 2022, Docket No. 32.) The Eighth Circuit has now remanded this case with instructions for this Court to calculate and collect Reichling's appellate filing fee in accordance with *Henderson v. Norris*, 129 F.3d 481 (8th Cir. 1997).

While Reichling has not filed an application to proceed *in forma pauperis* ("IFP") on appeal,¹ filing a notice of appeal is sufficient to trigger assessment by the Court of the appellate filing fees. *See Henderson*, 129 F.3d at 484. If an incarcerated individual has sufficient means, he is required to make an initial partial payment toward the filing fee. *See id.* at 483-84; 28 U.S.C. § 1915(b)(1). Whether or not he has made this initial payment, however, he is required to pay the remaining balance through periodic deductions from his prison trust account. *See id.*; 28 U.S.C. § 1915(b)(2). An incarcerated individual's initial filing fee is 20 percent of the greater of either (1) the average monthly deposits in their account or (2) the average monthly balance in their account for the proceeding 6-month period. 28 U.S.C. § 1915(b)(1). When "the district court does not receive a certified copy of the prisoner's account within 30 days of the notice of appeal, it shall calculate the initial appellate partial filing fee at \$35 or such other reasonable amount warranted by available information." *Henderson*, 129 F.3d at 485.

Although the Court has not received a certified copy of Reichling's account within 30 days of his notice of appeal, Reichling filed a document containing information from his trust account in connection with his IFP application in the district court, and, as the most recent information available to the Court, the Court relies on it in determining his

¹ Reichling did, however, file an application to proceed IFP in the district court. (IFP App., Feb. 22, 2022, Docket No. 10.) Reichling's application was approved by the Magistrate Judge. (Order Granting IFP App., May 6, 2022, Docket No. 16.)

initial filing fee. The document reflects that Reichling's average monthly deposits during the preceding six-month period was \$122.66. (See IFP App., Ex. 1 at 1, Feb. 22, 2022, Docket No. 10-2.) His average monthly balance during the same period was \$57.08. (*Id.* at 2.) Because the average monthly deposits exceeds the average monthly balance, the Court determines that a reasonable initial partial filing fee for his appeal is 20% of the average monthly deposits, or \$24.53.

Though Reichling may proceed once his initial filing fee has been paid, the facility where he is in custody shall "calculate and pay the remaining installments to the clerk of the district court until the whole of the appellate filing fees has been paid in full as provided by § 1915(b)(2)." *Henderson*, 129 F.3d at 485. The remaining balance of the \$505.00 appellate filing fee will be paid in installments, and prison officials are authorized to deduct funds from Reichling's inmate trust account as provided by § 1915(b)(2). Reichling will be required to pay this filing fee regardless of the outcome of his appeal.

ORDER

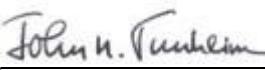
Based on the foregoing, and on all of the files, records, and proceedings herein, **IT IS HEREBY ORDERED THAT:**

1. The initial partial filing fee for the appeal in this matter is calculated to be \$24.53.

That amount is due immediately.

2. Reichling must pay the unpaid balance (\$480.47) of the statutory filing fee for this action in the manner prescribed by 28 U.S.C. § 1915(b)(2), and the Clerk of Court shall provide notice of this requirement to the authorities at the institution where Reichling is confined.

DATED: October 4, 2022
at Minneapolis, Minnesota.



JOHN R. TUNHEIM
United States District Judge